IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 680

THE COLD METAL PRODUCTS COMPANY,
Petitioner

v.

CRUCIBLE STEEL COMPANY OF AMERICA,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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BRIEF FOR RESPONDENT IN OPPOSITION

This is a conventional suit for alleged infringement of three patents relating to rolling mills, superimposed upon a conventional suit for royalties alleged to be due under a license agreement which was in force during a portion of the period with which the case is concerned.

Each of the patents has been held to be invalid for lack of patentable invention by the Court of Appeals of two different Circuits: by the Court of Appeals for the Sixth Circuit in *McLouth Steel Corp.* v. *Cold-Metal Products Co.* (decided January 9, 1958 and not yet reported*) as well as by the Court of Appeals for the Third Circuit in the present case.**. Thus there is complete unanimity, and no conflict

*A copy of the opinion is reproduced as an appendix to this brief. The opinion of the District Court which it affirmed is reported at 145 F. Supp. 81 (E. D. Mich. 1956).

**Reported at 247 F. 2d 241, and also reproduced as an appendix at pages 1a-18a of the petition, to which our references to the opinion will be cited.

Our references to the record will be made in the same form as that adopted in the petition.

of decision between Circuits, that each of the patents is invalid.

Nor is there any conflict of decision between Circuits as to any issue of infringement, the courts in the Sixth Circuit case having had no occasion to pass on that issue.

Each of the patents has expired.

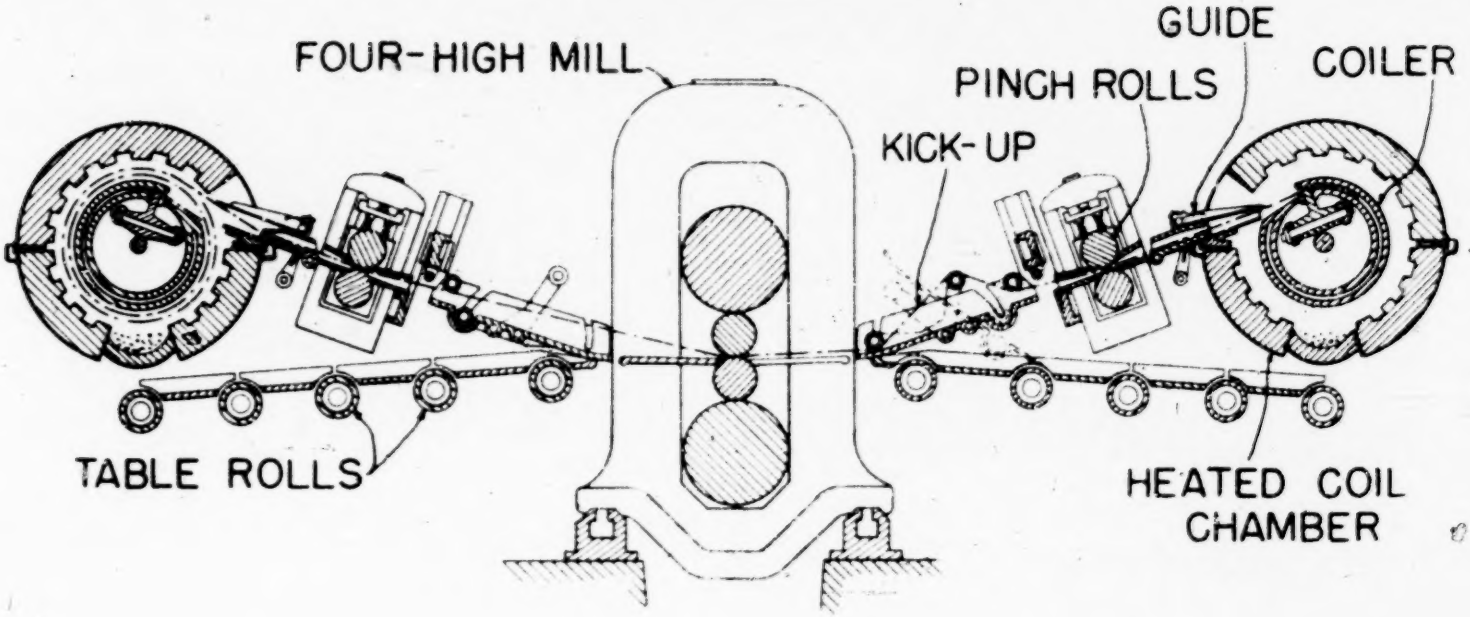
The petition seeks review of holdings by the Court of Appeals for the Third Circuit that certain claims of one of the patents (Montgomery 2,072,122) are invalid and that respondent's mill does not fall within the scope of these claims, or of one of the claims of another of the patents (Montgomery 2,214,107).

The background of the case is well stated in the Court of Appeals opinion (pp. 1a-3a). It will be noted that respondent has already paid substantial tribute (over $850,000) to petitioner for the use of earlier basic patents (Steckel 1,977,214 and Keeney & Ferm 1,918,968)*, whose expiration prior to the period in issue here entitled all the world, including respondent, to use their subject matters freely, provided only that the user refrain from using the detailed improvements to which the patents now in issue are directed.

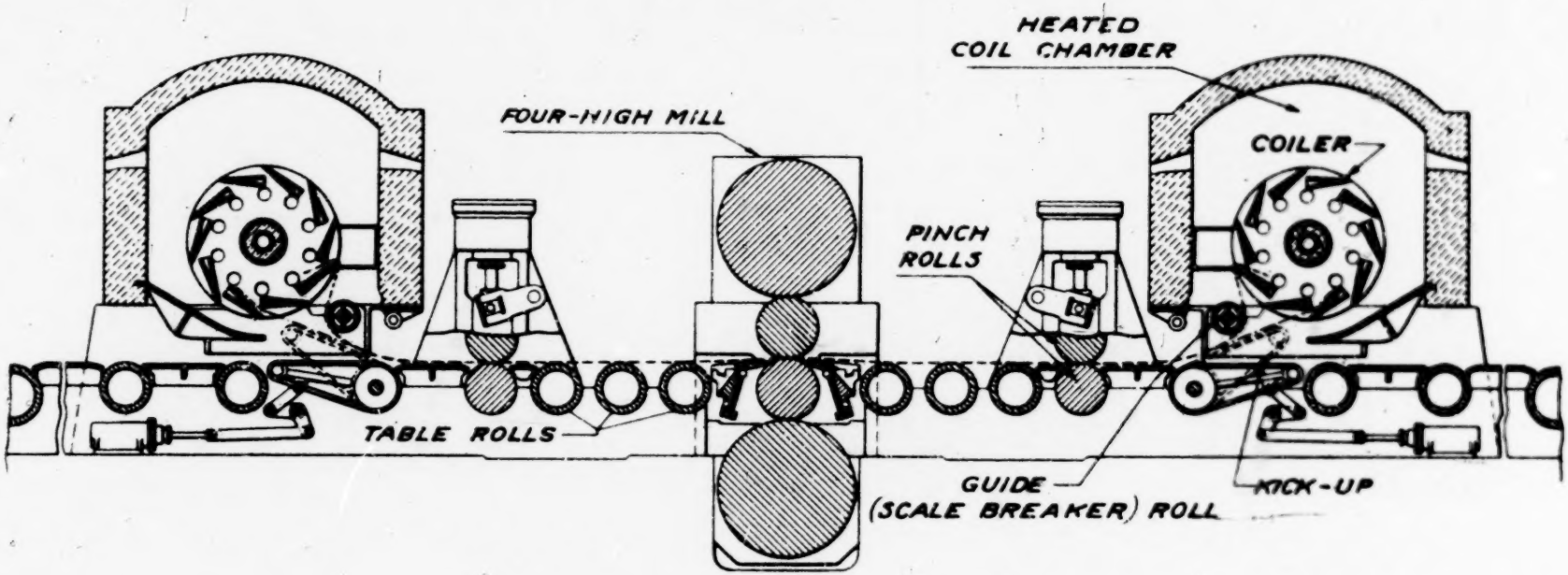
The close relationship between respondent's mill and the expired patents to which tribute has already been paid will be apparent from the chart on the facing page.

*These patents have themselves been held to be invalid by every court which has passed upon them: *Cold Metal Products Co.* v. *Newport Steel Corp.*, 119 F. Supp. 880 (E. D. Ky. 1954), affirmed 226 F. 2d 19 (6 Cir. 1955) and *McLouth Steel Corp.* v. *Cold Metal Products Co.*, 145 F. Supp. 81 (E. D. Mich. 1956), affirmed by the January 9, 1958 opinion above referred to.

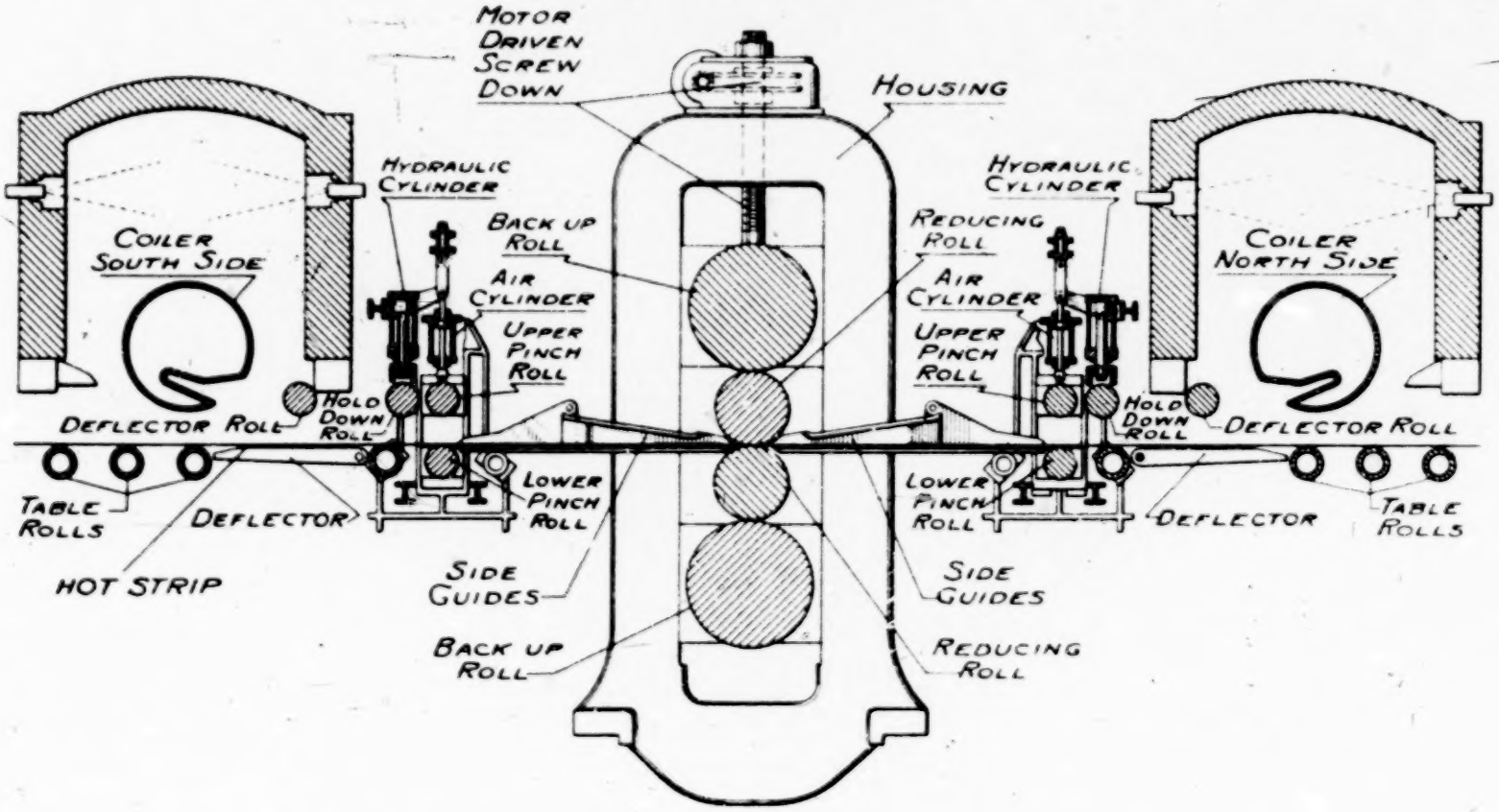
The Keeney & Ferm Mill
(R. App. 82b)



The Steckel 214 Mill
(R. App. 83b)



The Crucible Mill in Issue
(R. App. 84b)



THERE IS NO VALID REASON FOR CERTIORARI

Because of overlapping and confusion in petitioner's statement of the reasons relied upon for the granting of the writ (Petition, pp. 19-20), we regroup petitioner's reasons in this way:

1. That there is uncertainty, created by this Court's decision in *A. & P. Tea Co.* v. *Supermarket Corp.*, 340 U. S. 147 (1950), as to whether Rule 52(a) of the Federal Rules of Civil Procedure is applicable to patent cases (Reason 1);
2. That the Court of Appeals in the present case disregarded Rule 52(a) and hence that its decision is in conflict with the decisions of the Courts of Appeal of other circuits which apply that rule to patent cases (Reason 1) and with the decision of this Court in *Graver Mfg. Co.* v. *Linde Co.*, 336 U. S. 271 (1949), where this Court said and held that the rule was applicable to patent cases (Reason 2);
3. That the decision of the court below was "contrary to all of the evidence" and hence "such a departure from the accepted course of judicial proceedings as to call for this Court's supervision" (Reason 3);
4. That the decision of the court below is in conflict with prior decisions of this Court holding that the specification of a patent is directed to those skilled in the art (Reason 4).

These contentions are wholly without merit, as we shall now show.

There is no question but that Rule 52(a) applies to patent cases as well as to other cases

In *Graver Mfg. Co.* v. *Linde Co.*, 336 U. S. 271 (1949), this Court expressly so held and, indeed, went further in pointing out that Rule 52(a) was particularly applicable to

a case such as the one before it since there the trial court had been in an especially advantageous position to decide the facts correctly, having been enlightened by scientific demonstrations with respect to the testimony of experts, having visited laboratories to observe actual demonstrations of welding as taught by the patent, of the welding which was accused of infringement and of various aspects of the prior art, and having viewed motion pictures of various welding operations, tests, etc. (pp. 274-5). On that basis this Court accepted the findings of underlying facts which had been made by the District Court and concurred in by the Court of Appeals. And the Court went on to hold that the facts as found "warrant a conclusion here that *as a matter of law*"* the statutory requirements of patentability had been met and, accordingly, affirmed the concurrent holdings of validity by the lower courts.

This Court's subsequent decision in *A. & P. Tea Co.* v. *Supermarket Corp.*, 340 U. S. 147 (1950) represented no departure from what was decided or said in *Graver*. In *A. & P.* the Court was again confronted with concurrent holdings of validity. Noting that the underlying facts were "little in dispute," this Court nevertheless reversed because a test of patentable invention had been applied to those facts which was not in accord with legal standards and therefore the holding of validity could not stand *as a matter of law*.**

So far as holdings of infringement are concerned, they too involve questions of law as well as fact. The construction

*Emphasis ours throughout this brief.

**Apparently the same view was again taken by this Court in reversing per curiam (341 U. S. 912) a decision of the Court of Appeals for the Seventh Circuit sustaining on the basis of the findings of the District Court a patent on a child's feeding bowl. *Frager* v. *Crest Specialty*, 184 F. 2d 577 (7 Cir. 1950). Obviously that court's expression of doubt about the applicability of Rule 52(a) in *O'Brien* v. *O'Brien*, 202 F. 2d 254, 256 (7 Cir. 1953) alluded to at page 19 of the petition, represented that court's reaction to its reversal in *Frager* v. *Crest Specialty*. But, equally obviously, the doubt was small and momentary, for the rule has nevertheless been adhered to by that court, as petitioner admits (Petition, p. 19).

to be given a claim turns *as a matter of law* on an evaluation of the patentee's alleged contribution (as set forth in his specification and as presented by him to the Patent Office) in light of the prior art. *Coupe* v. *Royer*, 155 U. S. 565 (1895); *Black Diamond Co.* v. *Excelsior Co.*, 156 U. S. 611, 618 (1895); *Singer Co.* v. *Cramer*, 192 U. S. 265, 275 (1904). A patentee's broadest claim can be no broader than his actual invention, no matter how it may be expressed, and even where a defendant is within the literal words of the claim, if he has not actually appropriated the alleged contribution there can be no infringement. *Westinghouse* v. *Boyden Power Brake Co.*, 170 U. S. 537, 568 (1898); see also *Duff* v. *Sterling Pump Co.*, 107 U. S. 636, 639 (1882). This clearly is the case where one using the device of an expired patent is alleged to infringe a later patent by that use; he is entitled, *as a matter of law*, to a holding of non-infringement. *Scott Paper Co.* v. *Marcalus Co.*, 326 U. S. 249 (1945).

We believe the law to be clear that in a patent case, as in any other case, findings of fact, especially where *directly* based on demeanor testimony essential to a determination of those facts, are not to be set aside unless clearly erroneous, as Rule 52(a) provides. But all findings are not of this kind. Some are based on documents whose meaning is clear and as to which the reviewing court is in as good position as the trial court to understand, despite testimony of "experts" alleging the meaning to be otherwise. See *infra* pp. 14-15, *Kiwi Coders Corp.* v. *Aero Tool & Dye Works*, ___ F. 2d ___, 116 USPQ 2, 6 (7 Cir. 1957) and cases there cited; see also *Plax Corporation* v. *Precision Extruders*, 239 F. 2d 792, 795-6 (3 Cir. 1957).* Other "findings" involve questions of law, such as those relating to validity or infringement. As to such "findings", a reviewing court not only may set them aside where the law has been misapprehended below, but is under a duty to do so. Rule 52(a) is not "disregarded" where, as here, a Court

*For a comprehensive discussion of "primary" and "secondary" factual inferences, see Judge Frank's concurring opinion in *Wabash Corp.* v. *Ross Electric Corp.*, 187 F. 2d 577, 598-604 (2 Cir. 1951), cert. denied 342 U. S. 830 (1951).

of Appeals believes the court below erred in *holding* certain claims to be valid and infringed.*

Shortly before its consideration of the instant case the Court of Appeals for the Third Circuit, sitting *en banc*, not only expressly recognized the applicability of Rule 52(a) to patent cases, but showed a correct understanding of its effect, stating that the appellant in such a case has "the burden of convincing us that the District Court's findings, *to the extent that they are findings of fact*, are clearly erroneous." *R. M. Palmer Co. v. Ludeus, Inc.*, 236 F. 2d 496, 498 (1956). It is in no need of being "set straight" on this point, as petitioner asserts (p. 17).

It is evident that there is no doubt about the applicability of Rule 52(a) to patent cases which requires resolving by this Court.

The Court of Appeals did not disregard Rule 52(a) and its decision was not "contrary to all the evidence"

These points (2 and 3 in our regrouped statement of the reasons relied upon, p. 4, *supra*) can best be considered together. That they are without merit is shown by a brief discussion of the aspects of the decision as to which review is sought. Preliminarily, it may be observed that the primary evidence as to the prior art, the patents in suit and the construction and operation of respondent's mill was documentary and that there were no demonstrations, visits to laboratories, motion pictures, observations of any mill in operation or otherwise, as in the *Graver* case, *supra*. The construction and operation of respondent's mill are shown in printed documents (R. App. 89b-155b; cf. P. App. 131a-175a).

*The distinction between issues of fact and law in patent cases with particular reference to this Court's *Graver* and *A. & P.* decisions is discussed in the recent case of *Bergman* v. *Aluminum Lock Shingle Corp. of America* (9 Cir. December 13, 1957), F. 2d , 116 USPQ 32, the concurring opinion of Judge Pope, 116 USPQ at 38-41 doing so in detail.

As to Montgomery Patent 2,072,422*

The claims as to which review is sought (claims 6, 18 and 19)** are concerned with the pinch rolls used to feed the strip from the mill to the coiler or vice versa. An earlier patent, Steckel No. 1,977,214 (P. App. 197a-215a) had provided pinch rolls for feeding the strip to the mill or coilers and these pinch rolls were provided with a pair of pneumatic cylinders permitting them to be "raised or lowered as desired" (P. App. 212a, lines 129-130). Since the mill of the Steckel patent was used to roll thick ingots as well as thin strip, the height to which the rolls were raised was so great that there was danger of damage when the rolls were lowered onto thin strip from that great distance (R. App. 26b). The improvement to which these claims were directed was the provision of an additional set of cylinders of shorter stroke whereby the upper pinch rolls could be raised only a short distance off the strip by using the new cylinders, or the original longer distance by using the original set of longer stroke cylinders. That is to say, these claims added a second, independent set of lifting means to those provided in the earlier patent. The claims did not specify or indicate in any way how far off the strip the rolls would be raised by either of the independent sets of lifting means, only that one would lift them higher than the other.

The Court of Appeals said of these claims (p. 8a), much as this Court did of the claims which it held to be invalid in the *A. & P.* case:

> "We are satisfied that these claims disclose an obvious expedient, the addition to the means employed by Steckel of another means of the same type to perform the same function of lifting the upper pinch rolls, but to a different and less elevated position. This was mere aggregation and in any event did not rise to the dignity of invention."

The court then went on to consider the basis on which the petitioner had succeeded in persuading the District Court

*P. App. 91a-108a.

**Reproduced in footnote 2 at page 6a of the opinion.

to sustain these claims. That was the proposition, which had been advanced by expert witnesses on behalf of petitioner, that the pinch rolls in the new position to which they were lifted by the newly added set of shorter stroke cylinders performed certain new functions of guiding the strip, etc. The court disposed of this argument in two ways. The first was to point out that while the rolls in the low-lift position *as embodied in respondent's mill while it was a licensee under this patent* had unquestionably performed such guiding functions, that these advantages and functions flowed from the fact that in that particular mill the elevation of the pinch roll when raised by the supplemental lifting cylinders was such that it remained in guiding contact with the strip and that this was really a departure from the teachings of the patent, which repeatedly described the rolls when elevated to the low-lift position as "lifted off the strip," "lifted from the material" and "lifted out of the way when there is no further need for them" (pp. 8a-9a). Said the court in effect (p. 9a), petitioner was attempting to use as arguments in support of its patent, advantages or functions which flowed from what was in fact a departure from the patent's teachings.

Thus the Court of Appeals did not reject the finding of the District Court that the advantages referred to in fact existed when the pinch roll was properly placed in relation to the strip as it was in respondent's original mill. All of the undisputed testimony to which petitioner refers at page 15 as having been the basis for this finding was directed to what the situation was in an actual rolling mill—usually respondent's—as distinguished from the teachings of the patent.

The respect in which the Court of Appeals did reject the action of the District Court was its attribution of these advantages to "these Montgomery claims" (P. App. 244a). And the Court of Appeals was entirely correct in doing so, for the claims are completely silent as to how much the rolls shall be raised when raised by the additional lifting means which Montgomery provided, and it is clear from numerous

statements in the patent specification* that they were to be lifted entirely out of contact with the strip, not merely out of pinching engagement with it as the District Court mistakenly supposed.

In disagreeing with the District Court as to the meaning of the patent, clear on its face, which it was in as good a position to read and understand as was the District Court, the Court of Appeals did reject one bit of testimony by petitioner's expert (P. App. 50a-51a; which was palpably absurd, relying instead, as it had the right to do, upon its own reading of the patent (which happened to be in accord with the understanding of respondent's expert, R. App. 70b-71b).

But the Court of Appeals decision did not rest exclusively upon its disagreement with the District Court as to how the patent should be construed for, after discussing petitioner's contention based on the District Court's interpretation, and rejecting it as a departure from the patent's actual disclosure, the court went on to give a *second* ground for its decision, saying (p. 9a)

> "*In any event* [i.e., whether the patent be read as the court read it or as petitioner ought to have it read] at this stage of the art it was an obvious expedient to introduce such a roll where it was found to be needed."

In other words, the court said that even if the patent had disclosed and taught an operation having the features and

*Note for example Montgomery's statement that after the pinch rolls have served their purpose of feeding the strip to the mill and coiler they are "*lifted off the strip*" (P. App. 104a, col. 2, line 75 to 105a, col. 1, line 4). Though this statement was made with reference to the single-lift pinch rolls of Montgomery's Fig. 4, the same thought is expressed with respect to the operation of the double-lift pinch rolls of Fig. 5. Thus, "The pinch roll on that side [the entry side] is thus *lifted from the material*" and "The cylinders 82 on the exit side of the mill thus operate to *raise the associated pinch roll from the strip*" (P. App. 106a, col. 2, ll. 12-13, 24-26). Similarly, "The automatic control of the pinch rolls on both sides of the mill insures that the strip will be advanced properly into the mill and, on emerging therefrom, into the coiler, *whereupon the pinch rolls will be lifted out of the way when there is no further need for them*" (P. App. 107a, col. 2, ll. 3-8).

advantages claimed by petitioner, it still would be an obvious expedient, not meeting, *as a matter of law*, the standard of invention required to support a valid patent.

So far as infringement is concerned, these claims were held not to cover, or be infringed by, respondent's mill for the simple and conclusive reason that prior to the period for which royalties and infringement damages were sought, respondent had removed from its mill the additional set of lifting cylinders to which these claims are directed (Opinion, pp. 9a-10a).

The District Court had been persuaded to hold the claims to be infringed because the hold-down and guiding function performed by the pinch rolls of respondent's mill in the particular position they occupied when raised by the short stroke cylinders which repondent had used while operating as a royalty-paying licensee under this patent continued to be performed by an entirely separate hold-down roll which was added by respondent to perform this function at the time its mill was reconstructed in 1951 to remove features covered by outstanding patents. The Court of Appeals was entirely correct in its statement and holding that

> "But, as we have seen, the performance of these functions by a guide roll such as Crucible installed *was disclosed by the prior art* while the performance of those functions by the pinch rolls was not taught by the patent, indeed was excluded by its teachings. And the apparatus actually disclosed in these claims of the patent, means for raising the pinch rolls through a short distance and independent means for raising them through a greater distance, was not used by Crucible after November 19, 1951. We conclude that the district court erred in holding that claims 6, 18 and 19 of Patent No. 2,072,122 were infringed by Crucible" (Opinion, p. 10a).

Respondent having removed from its mill the additional lifting mechanism to which these claims were directed, and having used instead something disclosed by the prior art, its mill was properly held, *as a matter of law*, not to be covered by these claims.

As to Montgomery Patent 2,214,107

The single claim in issue (claim 6)* was held to be invalid by both the District Court and the Court of Appeals in both this case and the *McLouth* case. No review of that holding is sought by petitioner. But petitioner does seek review of the decision of the Court of Appeals that this claim did not cover the operation of respondent's mill.

The point of this patent, so far as the single claim in issue is concerned, is the accomplishment of *absolute uniformity* of tension in the strip between the mill and the coiling reel. In an earlier patent, Steckel 1,857,670 (P. App. 181a-184a) such absolute uniformity of tension had been achieved because the strip, in its passage from the mill to the coiling reel, came in contact with nothing to create any disparity of tension. But in later patents, Keeney & Ferm and Steckel '214**, disparities had been created by the strip's contact with intervening rolls such as the pinch rolls of each of those mills, the undriven tension rolls 79, 80 and 82 of Keeney & Ferm and the undriven guide roll 99 at the entrance of the furnace in Steckel '214.

Montgomery's theory was that if the strip was required to provide the driving power for a roll, the tension in the strip on one side of that roll would be different from the tension on the other side. His remedy was to withdraw the pinch roll from the strip so as to relieve the strip from the necessity of driving it and thereby prevent this roll from creating a disparity of tension.*** He also provided the guide

*Reproduced in footnote 6 at page 14a of the opinion.

**P. App. 185a-196a and 197a-215a respectively; see also chart, p. 3, *supra*.

***It is clear not only from Montgomery's purpose, but also from his description, that in this patent, as in patent '122, the rolls were to be lifted entirely out of contact with the strip. Thus Montgomery, describing the action on the entry side, said that the pinch (and flattening) rolls 63, 64 and 65 were *"lifted off the strip"* (P. App. 122a, col. 1, ll. 29-30) or *"lifted from the material"* (P. App. 128a, col. 2, ll. 43-45). And with respect to the delivery or exit side: "The cylinders 82 on the exit side of the mill thus operate to raise

roll at the furnace entrance with a separate motor drive so as to relieve the strip from the necessity of driving it and thereby prevent this roll from creating a disparity of tension.

The basis for the Court of Appeals' holding of non-infringement (Opinion, pp. 17a-18a) was that in respondent's operation the strip between the mill and the coiling reel was in contact with two undriven rolls, one the hold-down roll which respondent added when its mill was modified, the other an undriven guide roll at the furnace entrance (exactly like that of Steckel '214), each of which exerted a frictional drag on the material and therefore created disparities in the tension on the strip of exactly the character which it was the purpose of Montgomery to avoid.

It is this holding which petitioner asserts is in conflict with respondent's admission that "... as a practical matter the tension in the Crucible strip was substantially uniform notwithstanding its contact with two undriven rolls on each side of the mill" (Petition, p. 13). This admission, which respondent has always freely made, is based on the undeniable and undenied fact that the operation of respondent's mill is not materially affected by such small disparities of tension as are introduced by requiring the strip to drive these rolls. This means that the "problem" to which Montgomery was here addressing himself was really no problem at all and that his solution represented by this claim was of no practical importance, for his sole asserted contribution lay in the elimination of these small and inconsequential disparities of tension and the attainment of theoretical perfection. Respondent, which foregoes such theoretical perfection and follows the prior art practice on which Montgomery pur-

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the associated punch roll to the strip. The strip is thus free between the sending and uncoiling coilers except where engaged by the mill" (P. App. 128a, col. 2, ll. 50-61). Note also the statement with respect to the punch rolls on both sides of the mill (P. App. 128a, col. 2, ll. 32-45): "The automatic control of the punch rolls on both sides of the mill insures that the strip will be advanced properly into the mill and, on emerging therefrom into the coiler, wherein the punch rolls will be lifted out of the way when there is no further need for them.

ported to improve, was properly held not to infringe *as a matter of law*, notwithstanding that the tension produced by this prior art operation was "substantially uniform" for all practical purposes. It was not the theoretically perfect uniformity to which Montgomery's claim refers.

The Court of Appeals did not disregard the admission that the tension was "substantially uniform," but agreed with respondent's contention that it was nevertheless not uniform *within the meaning of this claim*. The court was correct as a matter of law in doing so, not only because of the inapplicability of the claim as a matter of words (elaborated and made more specific by the proceedings in the Patent Office*) but also because, as the court also held (p. 17a), respondent followed the procedure of the prior art rather than that of the claim.

The decision of the Court of Appeals is not in conflict with prior decisions of this Court holding that the specification of a patent is directed to those skilled in the art

The decisions to which petitioner alludes (Petition, p. 18)** are concerned with a wholly different point than that

*In distinguishing the claim in suit (then numbered 14) from Keeney & Ferm and Steckel 2214 (for some reason the even more pertinent Steckel patent 670 was not cited by the Patent Office), Montgomery pointed out that not only the pinch rolls of those prior patents *but also the undriven, non-pinching, tension rolls 79 and 80 of Keeney & Ferm* would create a disparity of tension, incompatible with the uniformity of tension with which Montgomery was concerned (Ex. D-14, p. 37). It follows that the statement of the claim that the strip is "freed" must be construed to mean that it is freed not only from any rolls in pinching engagement with it *but also from contact with any undriven rolls*. This point was made even clearer with respect to application claim 7 (Ex. D-14, p. 24) which was ultimately rewritten to become patent claim 9 (id., p. 40) and which was amended to call for "freeing the portions of the breakdown between the mill and the points of coiling *from frictional driving or retarding engagement*" (id., p. 43).

**The Telephone Cases, 126 U. S. 1, 536 (1888); Seabury v. Am. Ende, 152 U. S. 561, 567 (1894); Carnegie Steel Company v. Cambria Iron Company, 185 U. S. 403, 437 (1902); and Minerals Separation, Limited, et al. v. Hyde, 242 U. S. 261, 270 (1916).

which petitioner seeks to draw from them. The point of those cases is that if the disclosure of a patent is sufficiently complete to be understood by a man skilled in the art to which it relates (i.e. by one whose knowledge of the art enables him to fill in gaps which the patent does not disclose) its disclosure will not be held to be insufficient even if it cannot be understood by persons having no such fund of background information, such as lawyers or members of the public generally. But these cases do not say or hold or mean that a patent which is written in plain English and which relates to subject matter which a lawyer or layman can understand should, or properly can, be interpreted by a court to mean something which is plainly in conflict with what the patent says, on the basis of the testimony of some alleged expert who asserts that to him it means the opposite. Indeed, testimony by experts as to the meaning or proper interpretation of a patent whose terms are clear is an ancient abuse of their proper function, *Winans* v. *New York and Erie Railroad Company*, 21 How. (62 U. S.) 88, 100-1 (1858), and has been roundly condemned as a "burdensome impertinence," *Kohn* v. *Eimer*, 265 Fed. 900, 902-3 (2 Cir. 1920).

The fact that the Court of Appeals took the pains to read these patents for itself, and base its decision upon its own understanding of them, constitutes no basis for proper criticism, much less the charge that in doing so the court came into conflict with the cited decisions of this Court.

Conclusion

The decision of the Court of Appeals is correct and in conformity with the applicable decisions of this Court. There is no valid basis for review by this Court. Accordingly, the petition for certiorari should be denied.

Respectfully submitted.

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Of Counsel

January 22, 1958.

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

THE COLD METAL PRODUCTS COMPANY, *Appellant*, v. McLOUTH STEEL CORPORATION, *Appellee*.	APPEAL from the United States District Court for the Eastern District of Michigan.

Decided January 9, 1958.

Before ALLEN and STEWART, Circuit Judges, and BOYD, District Judge.

PER CURIAM. This case involves validity and infringement of six patents relating to reversing hot strip mills. In suit are the following claims of the following patents: Keeney and Ferm, No. 1,918,968, Claims 2, 5, 10, 11 and 16 to 26, inclusive; Steckel, No. 1,977,214, Claims 2 to 5, inclusive, 11 to 13, inclusive, 18, and 22; Montgomery, No. 2,072,122, Claims 6, 10, and 15 to 20, inclusive; Montgomery, No. 2,087,065, Claims 1 to 5, inclusive; Montgomery, No. 2,214,107, Claims 4 and 6 to 10, inclusive; Montgomery, No. 2,072,121, Claims 2 and 3. After an extended trial the district court held all the claims invalid for lack of invention. 145 F. Supp. 81 (1956).

Certain of the claims of three of the patents had been held invalid by this court in *Cold Metal Products Co. v. Newport Steel Corp.*, 226 F. (2d) 19 (1955), and as to these claims the district court relied upon that decision, finding that the evidence in the present case which was not before the court in the *Newport Steel* case did not justify a determination contrary to the latter decision. As to the remaining claims in suit, the district court made an independent

determination that they were lacking in invention.[1] Because of this disposition of the controversy the district court did not consider the issue of infringement (although the appellee conceded that certain of the claims, if valid, were infringed), nor the appellee's contention that one of the patents had been fraudulently procured.

A careful review of the record convinces us that the district court's factual findings and legal conclusions, thoroughly and clearly expressed in Judge Levin's written opinion, are free from error. That being so, it would be supererogatory for this court to essay an extended opinion, which could be little more than a paraphrase of what the district judge has written and of what has already been said by us in *Cold Metal Products Co.* v. *Newport Steel Corp.*, *supra*. See also, *Cold Metal Products Co.* v. *Crucible Steel Company of Amer.*, 247 F. (2d) 241 (1957).

The judgment of the district court is affirmed upon Judge Levin's opinion.

[1] Recently the Court of Appeals for the Third Circuit has held many of the same claims invalid. *Cold Metal Products Co.* v. *Crucible Steel Company of Amer.*, 247 F. (2d) 241 (1957).